IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 221 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? :

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BAKUL @ PETHO S/O RUPSING CHAVDA

Versus

DEPUTY COMMISSIONER OF POLICE RAJKOT

Appearance:

1. Special Criminal Application No. 221 of 2002

MR PRAVIN GONDALIYA for Petitioner No. 1

RULE SERVED for Respondent No. 1

MR AY KOGJE Ld. APP for Respondent No. 2

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 24/07/2002

ORAL JUDGEMENT

By invoking the jurisdiction of this Court under Article 226 of the Constitution of India, the petitioner has challenged the legality and validity of the order of externment dated 5.12.2001 passed by the Deputy Police

Commissioner of Rajkot City and the order Annexure-C passed by the appellate authority-respondent no. 2 confirming the order of externment on 4.3.2002.

The learned counsel for the petitioner has taken me through the entire memo of petition and the grounds of challenge and has submitted that on various grounds the order of externment is not sustainable in the eye of law.

It is argued that in the notice to show cause dated 30.8.2001 the externing authority has referred two different offence punishable under sec. 4 and 5 of the Gambling Act and the other offence punishable under the provisions of the Bombay Prohibition Act. Looking to the scheme of sec. 56 read with sec. 59, the registrationof these two criminal cases would not have given any rise for issuance of the notice under sec. 59 of the Act. This unwarranted reference makes the show-cause notice bad and prejudicial as there were no criminal antecedents registered through out the year 1998. The next point argued by Mr. Gondaliya is that the order passed by the appellate authority Annexure-C is an order passed without application of mind. It was obligatory on the part of the appellate authority to consider the papers of proceedings of externment case with utmost care and diligence. One line in the order Annexure-C indicates that the authority has mechanically signed the order without perusing the papers and submissions made by the counsel appearing for the appellant. In the order, it is mentioned by the appellate authority that there are allegations as to the involvement of the appellant-petitioner in vehicle theft cases. Plain reading of the notice served under sec. 59 of the Bombay Police Act does not reveal any fact which can support the statement made in the order passed by the appellate authority. Ld. counsel for the petitioner has submitted that the ratio of the decision in the case of Kalubhai Rambhai Katariya vs. State of Gujarat reported in 22 GLR P. 5 would apply to the facts fo this case. Referring the paras-8 and 9 of the decision, it is argued that the authority while exercising the powers of externment conferred under sec. 56 of the Bombay Police Act should not be exercised blindly because safety of the citizens lies only upon the procedural safe gaurd. It is rightly submitted that in the present case, the appellate authority hasnot followed maticulously the procedural safe guards. It is a case wherein it can be conferred that the file submitted by the externing authority was not even carefully perused.One more probability also emerges that some other papers lyingon the table of the

appellate authority were also seen by the authority as if they are partof the appeal proceeding initiated by the petitioner, otherwise, there is no scope of reflection of the above referred statement wherein it is mentioned that the petitioner was found involved in vehicle theft case. In the cited decision, the externing authority has committed an error only in mentioning the name of the statute. It was mentioned inthe order that the petitioner was engaged in committing the offence punishable under Chapter-12, 16 and 17 of the Bombay POlice Act. In reality, the externing authority ought to have written IPC instead of Bombay Police Act. The error committed in mentioning the name of the State was considered to be a matterof great significance and in violation of procedural safe guards because the order of externment directly concerned with the protection of liberty and safety of the citizen.

The affidavit of Mr NN Komar, Superintendent of Police, Godhra, at the relevant time Asstt. Police Commissioner, Rajkot, is tendered today by the ld. APP Mr. Kogje and the same is taken on record. Ld. APP Mr. Kogje during the course of oral submissions has placed reliance on the decision in the case of Smt. Hawabi Sayed Arif Sayed Hanif, vs. L. Hmingliana and others, reported in 1993 Cri.L.J. p. 172. This cited decision deals with a case where the Apex Court has found that some typographical error was committed by the authority but the present case on hand is not a case of typographical error, so this judgment would not help the otherside.

If the court founds that the appellate authority has committed an error and the order Annexure-C has been passed without application of mind, than the same would automatically adversely affect the order of externment because the order of externment cannot be said to have been confirmed by the appellate authority by a legal or valid order. I agree that this court can send the matter to the appellate autority again with a direction to pass an appropriate order but in viewof the time spent and the fact that the petitiner has remained out side the territory for a petty long period of approximately one year by now. Such an order would frustrate the cause agitated before this Court when the ratio of the decision in the case of Kalubhai Rambhai Katariya (supra) is applicable to the facts of the present case. The orders under challenge requires to be quashed on this sole ground only. No other grounds are required to be discussed.

In the result, this petition is allowed. The impugned order of externment dated 5.12.2001 passed by the Deputy Police Commissioner, Rajkot city and the order at Annexure-C dated 4.3.2002 passed by the appellate authority-respondent no. 2 confirming the order of externment are hereby quashed and set aside. Rule is made absolute. DS permitted.

(C.K. BUCH, J.)
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